

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DARREN LEE SMITH,

Plaintiff,

v.

PUGET SOUND ALLERGY, ASTHMA &
IMMUNOLOGY on behalf of Jane Doe,

Defendant.

CASE NO. C21-5169-JCC

ORDER

This matter comes before the Court *sua sponte*. On May 6, 2021, the Honorable Theresa L. Fricke, United States Magistrate Judge, granted Plaintiff's motion to proceed *in forma pauperis* and recommended the Court review the complaint under 28 U.S.C. § 1915(e)(2)(B) prior to the issuance of a summons. (Dkt. No. 6 at 1.)

Plaintiff alleges that in October 2020, an employee at Puget Sound Allergy, Asthma & Immunology ("PSAAI") "damaged [his] right arm with needles and told [him] all men are nothing and are pawns." (Dkt. No. 7 at 5.) He further alleges that "a [d]octor confirmed noticeable needle hole pigmentation skin changes four months later." (*Id.*) Based on these allegations, he brings claims against PSAAI based on 38 U.S.C. § 7316, 51 U.S.C. § 21037, medical malpractice, assault, and medical negligence. (*Id.* at 3.)

1 Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss an *in forma pauperis*
2 complaint at any time if it fails to state a claim, raises frivolous or malicious claims, or seeks
3 monetary relief from a defendant who is immune from such relief. To avoid dismissal for failure
4 to state a claim, a complaint must contain sufficient factual matter, accepted as true, to state a
5 claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). The
6 complaint must be dismissed if it lacks a cognizable legal theory or states insufficient facts to
7 support a cognizable legal theory. *Zixiang v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013). The Court
8 also has an independent obligation to address whether it has subject matter jurisdiction over
9 Plaintiff's claims. *See Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004). The Court
10 liberally construes *pro se* complaints. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

11 Even liberally construing Plaintiff's complaint, the Court finds it is subject to dismissal
12 for failure to state a claim and lack of subject matter jurisdiction. First, Plaintiff's claims under
13 38 U.S.C. § 7316 and 51 U.S.C. § 20137 are not legally cognizable. Neither of these statutes
14 provide a cause of action. Rather, they confer immunity on Department of Veterans Affairs
15 ("VA") and National Aeronautics and Space Administration ("NASA") medical personnel by
16 requiring patients injured by these personnel to recover from the United States under the Federal
17 Tort Claims Act ("FTCA") rather than from the individual practitioners. To the extent Plaintiff
18 intends to assert a claim under the FTCA, he fails to allege sufficient facts to support such a
19 claim. The FTCA allows suits against the United States for personal injury caused by a
20 government employee's negligence under certain circumstances. 28 U.S.C. §§ 1346(b)(1), 2674.
21 Plaintiff's complaint names only PSAAI as a defendant and alleges no negligent conduct by
22 employees of the VA, NASA, or any other government agency. Accordingly, the Court
23 DISMISSES Plaintiff's federal claims.

24 Plaintiff's remaining claims are state law claims for medical malpractice, medical
25 negligence, and assault. Where, as here, the Court has dismissed all claims over which it has
26 original jurisdiction, the Court may decline to exercise supplemental jurisdiction over related

1 state law claims. 28 U.S.C. § 1367(c)(3). In the absence of any viable federal claim, the Court
2 declines to exercise supplemental jurisdiction over Plaintiff's state law claims. Accordingly, the
3 Court DISMISSES Plaintiff's complaint without prejudice. Because amendment would be futile,
4 the dismissal is without leave to amend. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339
5 (9th Cir. 1996). Plaintiff's motion to change venue (Dkt. No. 5) is DENIED as moot. The Clerk
6 is DIRECTED to close this case and to send Plaintiff a copy of this order.

7 DATED this 10th day of May 2021.

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11 John C. Coughenour
12 UNITED STATES DISTRICT JUDGE
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